



Asa Hutchinson
Governor

ARKANSAS TOBACCO CONTROL



Steve Goode
Director

BOARD MEETING MINUTES SEPTEMBER 1, 2016

The Arkansas Tobacco Control Board met on Thursday, October 6, 2016 for its monthly meeting in the Main Street Mall Building, located at 101 E. Capitol Avenue, Little Rock, Arkansas, beginning at 10:00 a.m. in Suite 119. There were 6 Board members present. Those attending were Chairman Kevin Case, Mr. Sam Stathakis Jr, Dr. Shabbir Dharamsey, Ms. Carol Dyer, Dr. J. J. Lacey, Mr. Jay Hickey and Dr. Brad Mayfield.

Chairman Kevin Case began the meeting with a "Welcome" to those attending. He then introduced Greg Kirkpatrick serving as the Hearing Officer and Mrs. Heather Pierce serving as Court Reporter. Mr. Case then proceeded with the meeting.

Mr. Case asked for a motion to approve the board meeting minutes from August 4, 2016.

A motion was made to approve the August minutes and was passed with 5 yes votes, 1 vote not counted due to board member Dr. Dharamsey running late and 1 absent.

The default list dated September 1, 2016 was presented and read aloud by Attorney Roland Darrow.

A motion was made to approve the default list and was passed with 5 yes votes, 1 vote not counted due to board member Dr. Dharamsey running late and 1 absent.

The Hearing Officer then opened the Disciplinary Hearings and asked Attorney Roland Darrow, to present the following.

CONSENT ORDERS

**IN RE: ESMail ESMail and
HAPPY MART
FORREST CITY, ARKANSAS
PERMIT NO. 11643-02**

NO. 2016-079

On February 19, 2016, a store inspection was conducted on Respondents' business premises and during the course of the inspection and subsequent investigation, it was discovered that Respondents possessed tobacco products for which the Arkansas tobacco excise tax had not been paid. Respondents had also failed to maintain invoices as required by law for the untaxed tobacco they possessed.

The Respondents are fined \$325.00 as a civil penalty for the violation of A.C.A. § 26-57-245, Respondents' retail permit is suspended for a period of 15 days and the confiscated tobacco products are ordered to be destroyed; Respondents are fined \$1,000.00 as a civil penalty and Respondents' retail permit is suspended for 15 days for the violation of A.C.A. § 26-57-213. Respondents' total fine is \$1,325.00 and the suspensions shall run concurrently.

The board shall retain jurisdiction of this matter for purposes of implementing and enforcing this Consent Order, and that Respondents' failure to comply with any provision herein shall constitute a violation of a Board's Order for which the Board may impose additional disciplinary action.

A motion was made to find the Respondent guilty and levy the suggested penalty. The motion was seconded and passed with 7 yes votes and 1 absent.

**IN RE: ESMail ESMail and
HAPPY MART #4
FORREST CITY, ARKANSAS
PERMIT NO. 12598-02**

NO. 2016-111

On February 19, 2016, a store inspection was conducted on Respondents' business premises and during the course of the inspection and subsequent investigation, it was discovered that Respondents possessed tobacco products for which the Arkansas tobacco excise tax had not been paid. Respondents had also failed to maintain invoices as required by law for the untaxed tobacco they possessed and failed to have ATC server awareness forms completed on all employees.

The Respondents are fined \$6,587.50 as a civil penalty for the violation of A.C.A. § 26-57-245, Respondents' retail permit is suspended for a period of 10 days and the confiscated tobacco products are ordered to be destroyed; Respondents are

fined \$500.00 as a civil penalty and Respondents' retail permit is suspended for 5 days for the violation of A.C.A. § 26-57-213; and Respondents are fined \$100.00 as a civil penalty for the violation of A.T.C.B. Rule 4.1. Respondents' total fine is \$7,187.50 and the suspensions shall run consecutively for a total of 15 days.

The board shall retain jurisdiction of this matter for purposes of implementing and enforcing this Consent Order, and that Respondents' failure to comply with any provision herein shall constitute a violation of a Board's Order for which the Board may impose additional disciplinary action.

A motion was made to approve the consent order and was passed with 7 yes votes and 1 absent.

**IN RE: DEANNE SUE GADDIS and
PUFF-N-STUFF TOBACCO STORE
GREERS FERRY, ARKANSAS
PERMIT NO. 12182-01**

NO. 2016-287

On July 8, 2016, a store inspection was conducted on Respondents' business premises and during the course of the inspection and subsequent investigation, it was discovered that Respondents possessed cigarettes which did not have sufficient tax stamps, had failed to maintain invoices as required by law, and advertised several cigarette brands at prices below state minimums.

The Respondents are fined \$100.00 as a civil penalty for the violation of A.C.A. § 26-57-234(a)(1), Respondents are fined \$500.00 as a civil penalty and their retail permit is suspended for 1 day for the violation of A.C.A. § 26-57-213, and Respondents are fined \$100.00 as a civil penalty for the violation of A.C.A. § 4-75-708. Respondents' total fine is \$700.00 and a 1 day permit suspension.

The board shall retain jurisdiction of this matter for purposes of implementing and enforcing this Consent Order, and that Respondents' failure to comply with any provision herein shall constitute a violation of a Board's Order for which the Board may impose additional disciplinary action.

A motion was made to approve the consent order and was passed with 7 yes votes and 1 absent.

**IN RE: SHAHID AHMAD and
2020 INVESTMENT INC. DBA 2020 MARKET
GLENCOE, ARKANSAS
PERMIT NO. 08190-04**

NO. 2016-045

On February 5, 2016, a store inspection was conducted on Respondents' business premises and during the course of the inspection and subsequent investigation, it was discovered that Respondents possessed cigarette products for which the Arkansas cigarette excise tax had not been paid. Respondents had

also failed to maintain invoices as required by law for the untaxed cigarettes they possessed and had purchased from an unlicensed dealer. The Respondents also failed to have signed ATC Server Awareness Forms on file for all store employees.

The Respondents are fined \$6,400.00 as a civil penalty for the violation of A.C.A. § 26-57-245, Respondents' retail permit is suspended for a period of 14 days and the confiscated tobacco products are ordered to be destroyed; Respondents are fined \$500.00 as a civil penalty and Respondents' retail permit is suspended for 14 days for the violation of A.C.A. § 26-57-213; Respondents are fined \$500.00 as a civil penalty and Respondents' retail permit is suspended for 5 days for the violation of A.C.A. § 26-57-228; and Respondents are fined \$100.00 for the violation of A.T.C.B. Rule 4.1. Respondents' total fine amount is \$7,500.00 and must be paid in full by no later than December 1, 2016. Respondents' suspensions shall run concurrently for a total of 14 days.

The board shall retain jurisdiction of this matter for purposes of implementing and enforcing this Consent Order, and that Respondents' failure to comply with any provision herein shall constitute a violation of a Board's Order for which the Board may impose additional disciplinary action.

A motion was made to approve the consent order and was passed with 7 yes votes and 1 absent.

LENIENCY HEARING OR BOARD MANDATED HEARINGS

IN RE: TIMOTHY LEE and CASE NO. 2016-0219
ORANGE LLC. DBA DISCOUNT TOBACCO OF FARMINGTON
FARMINGTON, AR

On April 4, 2016, a compliance was performed on said business and during the course of said compliance, a tobacco product was sold to a minor.

Greg Kirkpatrick addressed Attorney Roland Darrow and asked for him to call his first witness. Mr. Darrow called Agent Bill Holohan to the stand. Agent Holohan addressed the board and gave a brief testimony. He stated that he was at the above store doing a routine compliance check. He stated that he sent in a female minor 16 years of age to make a purchase of tobacco product. The minor then went into the store to attempt the purchase. She went up to the cashier and asked for a pack of cigarettes. The cashier did not ask to see her driver's license and went through with the sale. The minor then went back out to Agent Holohan. At that time is when Agent Holohan went back into the store and addressed the cashier. He let her know who he was and that he was with Arkansas Tobacco Control. He stated that she was being cited for selling tobacco product to a minor and then issued her the citation.

Mr. Kirkpatrick then addressed the defendant and let them know it was their time to give their testimony. At that point Mrs. Kenna Lee stepped forward and

addressed the board. She stated that she was in no way contesting that her cashier sold to a minor. She said she went back and saw the footage and knows she did. Mrs. Lee stated that she was there to ask for leniency due to upon further investigation finding that this cashier had been stealing money from the store. She stated that the cashier knew that she would be able to steal money easily if she sold tobacco to minors. She would act like she was entering in the amount into the cash register but in fact she was just hitting a default button to open the drawer and then keeping the money. She stated also that this was not the first time the cashier has done this. She stated that she erred on the side of second chances instead of terminating the cashier when she found out the first time because she was a single mother of 4 children. She again stated that she was not contesting the act but asking for leniency for the suspension. She stated that they are a tobacco store only and that to be shut down for even a few days would be detrimental to store sales. She stated that she has done everything she can think of to make sure that all her employees understand the consequence for selling to a minor and that she may be stern enough in that delivery. She understands that she needs to be a lot stricter and put in place better procedures both practiced and on paper for the store and its employees.

Mr. Kirkpatrick asked Attorney Darrow if he had anything else she would like to add in closing and Attorney Darrow stated that he did not. Mr. Kirkpatrick then addressed the defendant Mrs. Lee and asked if she had anything else she would like to add in closing and she stated that she is looking into a POS system that is currently being tested in her families other store locations at the moment. She has purchased the hardware but has not put it in place until they have worked out all the bugs. She is not sure when the system will be put in place in her store.

A motion was made to fine the respondents \$500 with a 3 day suspension and mandatory Merchant Education Training for all employees of Discount Tobacco of Farmington.

The motion passed with 5 yes votes, 1 no vote and 1 absent.

Deputy Director Sled gave a brief update on the Enforcement division activities and compliance check rates. Said everything was going well and provided a graph chart for the board to illustrate the progress.

Deputy Director Larry Owens addressed the board and gave a brief update on the FDA side. He stated that all is going well and that the agency had been selected to be a pilot agency for going into vapor store locations and conducting compliance checks in said stores. He stated that things are running smoothly.

ADJOURNMENT

In closing, Mr. Case announced the next Board Meeting will be October 6, 2016, and then the meeting was adjourned.

Minutes prepared by

September 10, 2016

Christi Harper

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